STATE OF MICHIGAN

COURT OF APPEALS

SENSIENT FLAVORS, L.L.C.,

Plaintiff/Counterdefendant/Third-Party Defendant/Cross-Plaintiff-Appellee/Cross-Appellant,

v

CROSSROADS DEBT, L.L.C.,

Third-Party Plaintiff/Cross-Defendant-Appellant/Cross-Appellee,

v

CHERRY BLOSSOM, INC.,

Defendant/Counterplaintiff/Third-Party Defendant,

and

CHRISTOPHER L. HUBBELL, HUBBELL TRUCKING, INC., and WRS HOLDINGS, L.L.C.,

Defendants/Third-Party Defendants.

UNPUBLISHED
October 31, 2013

No. 302323
Grand Traverse Circuit Court
LC No. 2009-027342-PD

Before: WILDER, P.J., and DONOFRIO and BECKERING, JJ.

PER CURIAM.

Third-party plaintiff/cross-defendant Crossroads Debt, L.L.C. (Crossroads) appeals as of right the trial court's January 10, 2011, order in this commercial dispute. Crossroads challenges the trial court's previous June 1, 2010, order denying Crossroads's motion for summary disposition and granting partial summary disposition for third-party defendant/cross-plaintiff Sensient Flavors, L.L.C. (Sensient) pursuant to MCR 2.116(I)(2). On cross-appeal, Sensient challenges the trial court's January 10, 2011, order granting partial summary disposition for Crossroads pursuant to MCR 2.116(C)(10). Because trial court properly determined that Sensient was a buyer in the ordinary course of business that took Cherry Blossom, Inc.'s (Cherry

Blossom's) cherries free of Crossroads's security interest, that Crossroads was precluded from enforcing its security interest with respect to the cherry colorings and flavorings, that Crossroads had a superior interest to the remaining stored cherries at the Cherry Blossom facility, and that Sensient's unjust enrichment claims with respect to Sensient's wage payment and payment for defective goods lack merit, we affirm in both appeals.

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

This case involves a commercial dispute between Sensient and Crossroads that began with each party's dealings with Cherry Blossom. Cherry Blossom is in the business of processing cherries and cherry products. In 2001, defendant Christopher L. Hubbell purchased the Cherry Blossom name and cherry processing operation from Sensient. The agreement between Sensient and Cherry Blossom required Cherry Blossom to purchase cherries from local farmers to use to fulfill orders from Sensient. Because of financial difficulties, however, Cherry Blossom was unable to purchase cherries or obtain financing. As a result, Sensient began purchasing cherries directly from local farmers, who delivered the cherries to Cherry Blossom for storage and processing. Sensient filed Uniform Commercial Code (UCC) financing statements to perfect its security interest in its cherries. Cherry Blossom ultimately fell behind on its payments to Sensient.

On December 4, 2007, Sensient and Cherry Blossom entered into a settlement agreement whereby Sensient forgave $6.9 million of Cherry Blossom's indebtedness in exchange for $1,400,000. Pursuant to the settlement agreement, Sensient agreed to purchase all of its cherry products from Cherry Blossom and Cherry Blossom agreed to purchase all of the raw ingredients necessary to process cherries from Sensient. Beginning in January 2008, Cherry Blossom was required to purchase all raw cherries and other ingredients on its own without Sensient's involvement. At the time that the parties entered into the settlement agreement, Cherry Blossom possessed a quantity of cherries that Sensient owned, which had been delivered to and stored at Cherry Blossom's facility. Pursuant to the settlement agreement, title to the "previously consigned cherry products" remained with Sensient until Cherry Blossom removed the cherries from the storage pits to process for sale to Sensient, at which time Cherry Blossom was deemed to have purchased the cherries and title transferred to Cherry Blossom. In addition, before the close of business each week, Cherry Blossom was to report to Sensient the amount of previously consigned cherry products that Cherry Blossom purchased during the week. On every Monday, the parties were to calculate the amounts invoiced by Sensient to Cherry Blossom for previously consigned cherry products, flavorings and colorings, and freight and insurance charges since the previous reconciliation. The parties were also to calculate the amounts that Cherry Blossom invoiced to Sensient for finished products purchased by Sensient and delivered to either Sensient or Sensient's customers. If the Cherry Blossom credits exceeded the Sensient credits, Sensient would immediate pay the difference to Cherry Blossom. Likewise, if the Sensient credits exceeded the Cherry Blossom credits, Cherry Blossom would immediately pay the difference to Sensient. On December 6, 2007, following Cherry Blossom's payment of $1,400,000 to Sensient, counsel for Cherry Blossom filed termination statements terminating Sensient's financing statements covering its cherries.

The arrangement between Cherry Blossom and Sensient resulted in Sensient offsetting from its weekly payments to Cherry Blossom the amounts for raw cherries and colorings and

flavorings that Cherry Blossom purchased from Sensient. Between October 2008 and May 2009, Sensient offset $1,556,055.14 from its payments to Cherry Blossom for such amounts. According to Hubbell, Cherry Blossom's arrangement with Sensient proved unworkable. In early 2008, Cherry Blossom entered into discussions with Crossroads to obtain financing for its operations. Before Crossroads entered into a loan agreement with Cherry Blossom, Crossroads conducted a UCC search that revealed that all of Sensient's financing statements covering Cherry Blossom's inventory had been terminated. In March 2008, Crossroads filed financing statements covering "all assets" of Cherry Blossom. On July 3, 2008, Cherry Blossom and Crossroads entered into a loan and security agreement, and by July 23, 2008, Cherry Blossom had borrowed $1,000,000 from Crossroads.

Pursuant to the loan and security agreement, Cherry Blossom's purchasers were to make payment to Crossroads's collection agent, which would deduct from the payments Crossroads's fees and interest and remit the remainder to Cherry Blossom. Initially, a company called "LSQ" served as Crossroads's collection agent, and in October 2008, Cherry Blossom and Crossroads Financial NC, L.L.C. (Crossroads Financial), entered into an agreement whereby Crossroads Financial served as Cherry Blossom's collection agent. Cherry Blossom informed Sensient that it had entered into a financing agreement with Crossroads and had granted Crossroads a security interest in all of its assets, including its accounts receivable from Sensient. Cherry Blossom directed Sensient to remit payment on all invoices to Crossroads Financial.

From September 2008 to May 2009, Sensient paid LSQ and Crossroads Financial a total of $2,720,508.43. Crossroads Financial received payments totaling $170,073.70. That amount covered interest, collection fees, late fees, field exams, collection of an overpayment, and wire transfer fees. As of September 20, 2010, Cherry Blossom had not repaid any principal on its loan from Crossroads.

On or about May 28, 2009, Cherry Blossom notified Sensient that Cherry Blossom could no longer operate its business and lacked funds to pay its employees. Sensient became concerned about the proper storage and preservation of its raw cherries stored on Cherry Blossom's premises. In fact, Hubbell expressed that he was unsure if and when Cherry Blossom's electricity would be shut off. According to inventory reports that Cherry Blossom provided to Sensient, as of May 26, 2009, there were 1,501,183 pounds of "previously consigned cherries" remaining at Cherry Blossom's facility. Sensient notified Cherry Blossom that it was terminating the settlement agreement and taking possession of the remaining cherries. On June 8, 2009, Sensient's agents attempted to gain access to Cherry Blossom's facility to remove the remaining raw cherries from storage, but Hubbell denied Sensient's agents access to the facility.

Sensient filed this action seeking possession of the cherries remaining in storage at Cherry Blossom's facility. Crossroads filed a motion to intervene in the action also seeking possession of the remaining cherries, which it claimed as collateral for its loan to Cherry Blossom. Crossroads also sought the imposition of a constructive trust and the return of the proceeds from the sale of Cherry Blossom's inventory to Sensient. Crossroads alleged that it had a perfected security interest in Cherry Blossom's inventory, which Sensient converted. In addition, Sensient asserted an unjust enrichment claim against Crossroads alleging that it had returned more than $60,000 of defective products to Cherry Blossom and did not receive a refund for the defective products. Sensient also alleged that Crossroads had been unjustly

enriched when Sensient paid the United States Department of Labor (DOL) a wage payment for Cherry Blossom employees totaling $38,716.51 so that the DOL would withdraw the "hot goods" designation on products produced by the employees during payroll periods for which they were not paid.

Crossroads filed a motion for summary disposition pursuant to MCR 2.116(C)(10), and Sensient filed a motion for summary disposition pursuant to MCR 2.116(I)(2). The trial court determined that Sensient was a "buyer in the ordinary course of business" with respect to Cherry Blossom's finished products and, as such, it took the products free of Crossroads's security interest covering Cherry Blossom's inventory. The court also determined that Crossroads was precluded from pursuing its security interest with respect to the cherry colorings and flavorings under the theories of waiver, estoppel and/or acquiescence. With respect to the cherries that remained in storage at Cherry Blossom's facility, the trial court determined that those cherries were "consignment goods" under the UCC and that, as such, they were subject to Crossroads's perfected security interest. Finally, the trial court determined that Crossroads was not unjustly enriched by Sensient's wage payment to the DOL or by Sensient's return of defective goods to Cherry Blossom without a corresponding refund. Both parties appeal the trial court's determinations.

II. STANDARD OF REVIEW

We review de novo a trial court's ruling on a motion for summary disposition. *Lakeview Commons Ltd Partnership v Empower Yourself, LLC*, 290 Mich App 503, 506; 802 NW2d 712 (2010). A motion under MCR 2.116(C)(10) tests the factual support of a claim and is properly granted "if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *Id.* (quotation marks and citation omitted). We review a motion under subrule (C)(10) "by considering the pleadings, admissions, and other evidence submitted by the parties in the light most favorable to the nonmoving party." *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008). Further, "[s]ummary disposition under MCR 2.116(I)(2) is appropriate 'if it appears to the court that the opposing party, rather than the moving party, is entitled to judgment . . . .'" *Mich Head & Spine Institute, PC v State Farm Mut Auto Ins Co*, 299 Mich App 442, 447; 830 NW2d 781 (2013).

III. CROSSROADS'S ISSUES ON APPEAL

A. BUYER IN ORDINARY COURSE OF FINISHED PRODUCT

Crossroads argues that it had a perfected security interest in Cherry Blossom's inventory, including the flavorings, colorings, and cherries that had been removed from the storage pits. As such, Crossroads asserts that Sensient's retention of more than $1,500,000 in proceeds from the

sale of Cherry Blossom's inventory constituted conversion. Crossroads relies on MCL 440.9507(1) of Article 9 of Michigan's UCC, MCL 440.9101 *et seq*.,[1] which states:

> A filed financing statement remains effective with respect to collateral that is sold, exchanged, leased, licensed, or otherwise disposed of and in which a security interest or agricultural lien continues, even if the secured party knows of or consents to the disposition.

Sensient, on the other hand, argues that it took Cherry Blossom's inventory free of Crossroads's security interest because it was a buyer in the ordinary course of business as defined by MCL 440.1201(9). Except in limited circumstances not applicable in this case, a buyer in the ordinary course of business takes free of a security interest "even if the security interest is perfected and the buyer knows of its existence." MCL 440.9320(1). MCL 440.1201(9) defines "buyer in ordinary course of business" as:

> a person that buys goods in good faith,[2] without knowledge that the sale violates the rights of another person in the good, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. *A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices*. . . . A buyer in ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit, and may acquire goods or documents of title under a preexisting contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under article 2 may be a buyer in ordinary course of business. A person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt is not a buyer in ordinary course of business. [Emphasis added.]

It is undisputed that Sensient was Cherry Blossom's primary customer and purchased 99 percent of the cherries that Cherry Blossom processed. Pursuant to the 2007 settlement agreement, Sensient purchased finished cherry products from Cherry Blossom and set off from the purchase price the cost of raw cherries, colorings, and flavorings that Cherry Blossom had purchased from Sensient. These exchanges were reconciled and payment was made on a weekly basis. All sales were made in this manner in accordance with Cherry Blossom's usual and customary practices.

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[1] Effective July 1, 2013, article 9 of the Michigan UCC was amended by 2012 PA 87. Our references to UCC provisions are to those in effect at the time that the trial court decided this dispute.

[2] Crossroads does not assert that Sensient purchased the finished product with knowledge that its purchase violated the loan agreement between Cherry Blossom and Crossroads. There is also no assertion that Sensient structured its offsets in violation of the settlement agreement or to extort any value for the raw cherries, or flavorings and colorings, other than the fair market value for those ingredients.

Thus, it appears from the language of MCL 440.1201(9) that Sensient was a buyer in the ordinary course of Cherry Blossom's business.

Crossroads relies on the last sentence of MCL 440.1201(9) and argues that Sensient cannot be a buyer in the ordinary course because it acquired the finished product in partial satisfaction of a money debt since title to the raw cherries, colorings, and flavorings had transferred to Cherry Blossom and Cherry Blossom owed Sensient for those ingredients. Crossroads relies on *In re HSA II, Inc*, 271 BR 534 (ED Mich, 2002). In that case, H.S.A. II, Inc. (HSA) and Ford Motor Company (Ford) operated under an agreement whereby Ford purchased and supplied steel to HSA for use in HSA's production of automotive parts for Ford. *Id*. at 537. Ford also made weekly payments to HSA to cover overhead and other costs. Ford recouped the cost of the materials that it supplied by offsetting the amount of the supplied materials against the amount that HSA invoiced Ford upon the completion of the parts. When HSA ceased operations, a dispute arose between Ford and GMAC-BC regarding which entity had a superior interest in HSA's work in progress for Ford, HSA's finished goods for Ford, and HSA's steel inventory because GMAC-BC had a first priority security interest in HSA's inventory, raw material, and finished goods. *Id*.

Crossroads's reliance on *In re HSA II, Inc*, is misplaced for two reasons. First, the dispute in that case did not involve any parts manufactured by HSA and obtained by Ford between the time that GMAC-BC entered into its financing arrangement with HSA and the time that HSA ceased operations. *Id*. at 542. Rather, the dispute in that case centered on what remained in HSA's possession at the time that it ceased operations, i.e., HSA's work in progress for Ford, finished goods for Ford, and steel inventory supplied by Ford. *Id*. at 537. In fact, on appeal, the Sixth Circuit Court of Appeals determined that because there was no sale of finished goods to Ford, it was unnecessary to consider whether Ford was a buyer in the ordinary course of business. *GMAC Business Credit, LLC v Ford Motor Co*, 100 Fed Appx 404, 407 (CA 6, 2004). Accordingly, the bankruptcy court's determination that Ford was not a buyer in the ordinary course of business is mere dictum. See *In re HSA II, Inc*, 271 BR at 541. Unlike *In re HSA II, Inc*, the instant dispute between Crossroads and Sensient involves whether Sensient was a buyer in the ordinary course of goods actually purchased by and delivered to Sensient or Sensient's customers.

Crossroads's reliance on *In re HSA II, Inc*, is misplaced for a second reason. In that case, the bankruptcy court stated:

> Ford fails to qualify as a buyer in ordinary course of business for an additional reason. As noted, "[a] person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices." Although it is not disputed that [HSA] was in the business of manufacturing and selling parts, such as those at issue here, the arrangement set forth in the supply protection agreement for the manufacture and sale of parts to Ford was not the "usual or customary practice" of [HSA]. Indeed, the order approving the agreement was titled, in part, order "approving contracts outside the ordinary course of business under 11 U.S.C. § 363(b)(1)." [*Id*.]

Here, as previously discussed, Sensient purchased 99 percent of the cherries that Cherry Blossom processed, constituting almost Cherry Blossom's entire business. The arrangement between Cherry Blossom and Sensient whereby Sensient offset the cost of cherries, colorings, and flavorings from the cost of the finished product was the manner in which Cherry Blossom operated its business. Thus, under MCL 440.1201(9), Sensient's purchase of goods utilizing offsets comported with Cherry Blossom's "own usual or customary practices." Accordingly, Sensient constituted a buyer in the ordinary course of business pursuant to MCL 440.1201(9). The trial court therefore properly granted summary disposition for Sensient on Crossroads's claims for conversion and imposition of a constructive trust.

B. SENSIENT'S OFFSETS FOR FLAVORINGS AND COLORINGS

Crossroads next argues that the trial court improperly determined that Crossroads was precluded from pursuing its security interest with respect to the cherry colorings and flavorings under the theories of waiver, estoppel and/or acquiescence. "[A] waiver is a voluntary and intentional abandonment of a known right." *Quality Prods & Concepts Co v Nagel Precision, Inc*, 469 Mich 362, 374; 666 NW2d 251 (2003). "The usual manner of waiving a right is by acts which indicate an intention to relinquish it . . . or by so neglecting and failing to act as to induce a belief that it was the intention and purpose to waive." *Book Furniture Co v Chance*, 352 Mich 521, 526-527; 90 NW2d 651 (1958). "Estoppel arises where a party, by representations, admissions or silence, intentionally or negligently induces another party to believe facts, and the other party justifiably relies and acts on this belief, and will be prejudiced if the first party is permitted to deny the existence of the facts." *Casey v Auto Owners Ins Co*, 273 Mich App 388, 399; 729 NW2d 277 (2006) (quotation marks and citation omitted). Equitable estoppel is not a cause of action in and of itself, but may be asserted only as a defense. *Id.* Finally, *Random House Webster's College Dictionary* (1997) defines "acquiesce" as "to assent tacitly; submit or comply silently or without protest[.]" "The doctrine of estoppel by acquiescence presupposes that the party against whom the doctrine is asserted was guilty of inaction." *BPA II v Harrison Twp*, 73 Mich App 731, 735; 252 NW2d 546 (1977).

The trial court did not err by determining that Crossroads was precluded from pursuing its security interest with respect to the colorings and flavorings under the alternative theories of waiver, acquiescence, and estoppel. Richard Epstein, who performs work for Crossroads Financial, testified that Crossroads Financial was aware that Cherry Blossom purchased ingredients and flavorings from Sensient and that Sensient took deductions for those purchases. Karla Gava, a Crossroads employee, also testified that she was aware that Cherry Blossom purchased flavorings and sweeteners from Sensient and took deductions for those costs. Thus, the record indicates that Crossroads, through its collection agent, was aware that Sensient offset the costs of colorings and flavorings from the amount that it paid Cherry Blossom. Gava testified that she never contacted Sensient to ask about the offsets. In addition, Epstein testified that he did not concern himself with the amount of the offsets and that his concern was only that Crossroads's loan to Cherry Blossom remain "in formula." Epstein testified, "it was Cherry Blossom's responsibility to challenge Sensient if there were undue deductions. It really wasn't our concern." Because Crossroads, through its agents, was aware of the offsets for colorings and flavorings and made no effort to enforce its security interest during the eight months that Crossroads's collection agents accepted Sensient's payments, the trial court properly determined

that Crossroads was precluded from enforcing its security interest under the alternative theories of waiver, acquiescence, and estoppel.[3]

IV. SENSIENT'S ISSUES ON CROSS-APPEAL

A. REMAINING STORED CHERRIES[4]

Sensient first argues on cross-appeal that the trial court improperly determined that the remaining stored cherries at Cherry Blossom's facility were "consignment goods" under the UCC and, as such, were subject to Crossroads's security interest. Generally, in order for a security interest to be enforceable against a debtor and third parties with respect to the collateral, the debtor must have rights in the collateral or the power to transfer rights in the collateral to a secured party. MCL 440.9203(2)(b). In the case of a consignment, however, the UCC allows a consignee[5] to grant a security interest in property that it does not own. MCL 440.9319(1) provides that, "for purposes of determining the rights of creditors of . . . a consignee, while the goods are in the possession of the consignee, the consignee is deemed to have rights and title to the goods identical to those the consignor had or had power to transfer." MCL 440.9102(t) defines "consignment" as:

> a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and that meets all of the following:
>
> (i) The merchant deals in goods of that kind under a name other than the name of the person making delivery, is not an auctioneer, *and is not generally known by its creditors to be substantially engaged in selling the goods of others*.
>
> (ii) With respect to each delivery, the aggregate value of the goods is $1,000.00 or more at the time of delivery.
>
> (iii) The goods are not consumer goods immediately before delivery.

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[3] Crossroads's reliance on *Yamaha Motor Corp, USA v Tri-City Motors & Sports, Inc*, 171 Mich App 260; 429 NW2d 871 (1988), is misplaced. At issue in that case was whether a secured creditor was estopped from asserting its priority status over another creditor because of its failure to take immediate action against the debtors upon their default. *Id*. at 263-264, 273-275. That issue is not presented in the instant case.

[4] No evidence indicates that Cherry Blossom purchased any of the stored cherries in the storage pits on its own, without any assistance from Sensient, beginning in January 2008 as the settlement agreement between Cherry Blossom and Sensient provided. Thus, the record indicates that all of the remaining cherries in the storage pits were purchased by Sensient and delivered to Cherry Blossom for storage pursuant to the settlement agreement.

[5] A "consignee" is "a merchant to which goods are delivered in a consignment." MCL 440.9102(s).

(iv) The transaction does not create a security interest that secures an obligation. [Emphasis added.]

In this case, the cherries were delivered to Cherry Blossom for the purpose of sale, regardless of the fact that the sale was back to Sensient. The arrangement in this case was very similar to that in *In re Georgetown Steel Co, LLC v Progress Rail Servs Corp*, 318 BR 352 (Bankr D, SC, 2004), in which the court found a nearly identical transaction to be a consignment. In that case, Progress Rail Services Corporation (Progress Rail), like Sensient here, argued that the arrangement between it and the debtor did not constitute a consignment. Progress Rail delivered hot briquetted iron, or HBI, to the debtor for use in the production of steel. *Id*. at 354. Progress Rail maintained title to the HBI, which the debtor stored in a segregated location from its other inventory. *Id*. The debtor removed and used the HBI on an as-needed basis and once a week reported its usage to Progress Rail and paid for the HBI that it consumed during the week. *Id*. at 354-355. The bankruptcy court determined that Progress Rail delivered the HBI "for the purpose of sale" under the UCC. *Id*. at 357-358. Although Sensient argues that *In re Georgetown Steel Co, LLC* is inapplicable because it involved a previous version of the UCC, the requirement that goods be delivered "for the purpose of sale" is the same with respect to both MCL 440.9102(t) and the version of the UCC at issue in *In re Georgetown Steel Co, LLC*. See *id*. Thus, the cherries in the instant case were delivered for the purpose of sale.

Sensient also argues that the stored cherries were not consignment goods because Cherry Blossom is "generally known by its creditors to be substantially engaged in selling the goods of others." See MCL 440.9102(t)(i). Sensient's argument, on close scrutiny, fails. When Cherry Blossom engaged in a sale, the only sale was of goods to which Cherry Blossom held title under the settlement agreement. It is undisputed that title to the cherries transferred from Sensient to Cherry Blossom at the time that Cherry Blossom removed the cherries from the storage pits for processing. Thus, Cherry Blossom owned the cherries at that point and was not engaged in selling the goods of others. Sensient is attempting to avoid the effect of the termination of its financing statements and its failure to file subsequent financing statements covering the stored cherries after it entered into the settlement agreement with Cherry Blossom. Therefore, the trial court did not err by determining that the stored cherries were consignment goods that were subject to Crossroads's perfected security interest and that, accordingly, Crossroads had a superior interest in the remaining stored cherries.

B. WAGE PAYMENT

Sensient next argues that the trial court erroneously determined that Crossroads was not unjustly enriched by Sensient's wage payment to the DOL to remove the "hot goods" designation on Cherry Blossom's finished products. In order to establish an unjust enrichment claim, a plaintiff must show that the defendant received a benefit from the plaintiff and that an inequity would result to the plaintiff if the defendant is permitted to retain the benefit. *Liggett Restaurant Group, Inc v Pontiac*, 260 Mich App 127, 137; 676 NW2d 633 (2003). "In such a situation, a contract will be implied by law to prevent unjust enrichment." *Id*.

In this case, Crossroads received no benefit from Sensient's payment of Cherry Blossom employee wages to the DOL. The parties stipulated that Sensient received all of the finished cherries produced by Cherry Blossom employees during "payroll period one" and "payroll

period two," the periods at issue for which Cherry Blossom failed to pay its employees. The parties also stipulated that Crossroads had never been in possession of any of the cherry products produced by Cherry Blossom during those payroll periods. Thus, contrary to Sensient's argument, the "hot goods" designation did not cover any products that Crossroads claimed as collateral and sold. Accordingly, Sensient's unjust enrichment claim with respect to Sensient's wage payment to the DOL lacks merit.

C. DEFECTIVE PRODUCTS

Finally, Sensient argues that the trial court erroneously determined that Crossroads was not unjustly enriched when it was permitted to retain Sensient's payment for defective goods that it returned to Cherry Blossom. The trial court's decision was not erroneous. The record fails to show that Crossroads received a benefit as a result of the defective goods that Sensient returned to Cherry Blossom. The parties stipulated that Cherry Blossom's customers paid Crossroads's collection agent, which deducted its payments and fees and remitted the remainder of the amount to Cherry Blossom. The parties also stipulated that Sensient paid Crossroads Financial a total of $170,073.70, which covered interest, collection fees, late fees, field exams, collection of an overpayment, and wire transfer fees. As of September 20, 2010, Cherry Blossom had not repaid any principal on its loan from Crossroads. The record does not indicate what portion of the purchase price for the defective goods, if any, Crossroads Financial retained. Sensient admits that nothing in the record sets forth the specific amount of Sensient's payments for defective goods that Crossroads retained. Given the arrangement whereby Crossroads Financial retained a portion of Sensient's payments and remitted the remainder to Cherry Blossom, the record does not establish that Crossroads received a benefit as a result of Sensient's payments for defective goods or that an inequity would result if Crossroads was permitted to retain any purported benefit. See *Liggett Restaurant Group, Inc*, 260 Mich App at 137. Thus, the trial court properly granted summary disposition for Crossroads with respect to Sensient's unjust enrichment claim pertaining to the payment for defective goods.

Affirmed. Neither party having prevailed in full, no costs are taxable pursuant to MCR 7.219.

/s/ Kurt T. Wilder
/s/ Pat M. Donofrio
/s/ Jane M. Beckering